

**RESOLUTION IMPOSING A TEMPORARY SCARCE RESOURCE
RESTRAINT UPON WINSLOW TOWNSHIP, CAMDEN COUNTY**

COAH 08-2011

WHEREAS, Winslow Township (Winslow or Township) received first round certification on November 6, 1987 with a precertified need of 455 units; and

WHEREAS, Winslow received second round certification on October 11, 1995, with a certified plan that included a total of 444 new construction credits and 11 units that had been previously rehabilitated pursuant to the Council on Affordable Housing's (COAH or Council) rules; and

WHEREAS, Winslow petitioned COAH on December 19, 2005 with a Third Round plan addressing a total fair share obligation consisting of a 44-unit rehabilitation share, a 394-unit prior round obligation and a growth share obligation of 250 affordable units; and

WHEREAS, in response to *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. 1, 56 (App. Div. 2007), certif. denied 192 N.J. 72 (2007), COAH has recalculated each municipality's cumulative fair share obligation resulting in Winslow Township having a 92-unit rehabilitation share, a 377-unit prior round obligation and a projected growth share obligation of 638 affordable units; and

WHEREAS, Winslow does not have a local ordinance in effect that requires affordable housing to be part of any new residential development; and

WHEREAS, Winslow has had a *de facto* sewer moratorium in effect since 2004; and

WHEREAS, on December 20, 2005 Winslow Township adopted a Resolution Establishing a Waiting List for Sanitary Sewer Capacity; and

WHEREAS, on February 27, 2007 Winslow adopted a Resolution Approving Revised Sewer and Water Allocation Policy, stating that Winslow has requested an additional 188,000 gpd of sewer capacity from the Department of Environmental Protection (DEP) and that Winslow is trying to increase its sewer allocations through the decommissioning of the Sicklerville Wastewater Treatment Plant; and

WHEREAS, the resolution states that Winslow will require that all applicants seeking authorization for sanitary sewer must follow the revised sewer allocation policy which,

among other things, limits the initial allocation of sewer to any applicant at 7,500 gpd; and

WHEREAS, as of September 10, 2008, Winslow has approved sewer allocation for five (5) residential developments, which total 142,500 gpd and has four (4) projects requesting sewer allocation and not yet approved by Winslow totaling 29,740 gpd.; and

WHEREAS, on August 1, 2008 Taylor Woods, LLC (Taylor) submitted a motion requesting that COAH issue a scarce resource restraint upon Winslow's sanitary sewer and also requesting that its project be given priority for any available sewer capacity; and

WHEREAS, Taylor wishes to construct a 264 unit inclusionary rental project on an 100 acre site with 15 percent or 40 of the residential apartments set aside for low and moderate income households; and

WHEREAS, Taylor states that Winslow has an affordable housing obligation of 638 units and that as of the date of this motion, Winslow's zoning code and Fair Share plans do not provide for any inclusionary zoning within the municipality's borders and that Winslow lacks the sewer treatment capacity to meet its obligation; and

WHEREAS, Taylor submits that it will include an affordable component in its development plan without the additional density bonus mandated by the Appellate Division; and

WHEREAS, Taylor's projected site is within the Pinelands Regional Growth Area and is located in the Cedarbrook sewer service area; and

WHEREAS, Taylor states that DEP is considering the release of an additional 188,000 gpd of sewer capacity for the Cedarbrook service area; and

WHEREAS, Taylor argues that its project requires 74,625 gpd of sewer capacity, and that in order to preserve sufficient public sewer capacity, COAH should restrain Winslow from depleting available sewer treatment capacity further; and

WHEREAS, Taylor further maintains that it should get priority to the 188,000 gpd that will be made available once DEP grants the pending WQMP amendment; and

WHEREAS, Taylor argues that absent scarce resource restraints against Winslow for all

remaining public sewer, the ability of Winslow to meet its constitutional requirements could be lost or delayed; and

WHEREAS, Winslow Township submitted opposition to Taylor on August 21, 2008; and

WHEREAS, Winslow states that as of the date of Winslow's submission to COAH Taylor has not submitted a plan to the Winslow Township Planning or Zoning Board for consideration; and

WHEREAS, Winslow notes that of the 188,000 gpd pending before the DEP, 110,000 gpd has already been allocated to the Cedar Brook development pursuant to a court order and that the remaining 78,000 gpd and a method for disbursement of that capacity have been addressed by a Resolution of the Township Committee; and

WHEREAS, Winslow does not dispute that sewer is a scarce resource, but also states that Taylor's motion is premature, as without an application from Taylor pending before the Planning or Zoning Board, COAH cannot make a determination regarding the restraints as it is presumptuous to believe that Taylor's project will be approved; and

WHEREAS, Winslow states that Taylor's entire project area is within the Pinelands, necessitating Pinelands approvals prior to the development being allowed to go forward; and

WHEREAS, Winslow argues that it will be submitting a Third Round plan to COAH in accordance with COAH's rules and that COAH should wait until the Township completes its plan prior to issuing a scarce resource restraint; and

WHEREAS, Cedar Brook, the owner and developer of a property in Winslow and the court ordered recipient of 110,000 gpd of sewer capacity submitted a motion to intervene on August 29, 2008; and

WHEREAS, in December 2004 and in January 2005 the Winslow Township Zoning Board granted final major subdivision approval for Cedar Brook's development of a 274-lot subdivision which requires 82,000gpd of sewer capacity, at which time there was no requirement in Winslow's zoning ordinance for the provision of low- or moderate-income housing; and

WHEREAS, as a result of the *de facto* sewer moratorium in Winslow, Cedar Brook has been unable to proceed with its development, and commenced litigation against Winslow resulting in the adoption of a Resolution by the Township Council creating a waiting list for sewer capacity and the above referenced court order granting Cedar Brook first priority on the waiting list so that it will receive sewer capacity once it is available; and

WHEREAS, Cedar Brook argues that COAH should permit it to intervene under the Uniform Administrative Procedural Rules and the New Jersey Court Rules, arguing that it has an interest in Taylor's application which seeks to restrain additional sewer capacity in Winslow, and that without COAH permitting such intervention, Cedar Brook will be unable to protect its rights; and

WHEREAS, on September 2, 2008 Taylor submitted a reply to Winslow's opposition and to Cedar Brook's motion to intervene; and

WHEREAS, Taylor argues that a scarce resource restraint is warranted because the town acknowledges that it has a lack of available sewer and a significant outstanding affordable housing obligation and that the town's position ignores the potential for affordable housing within its borders; and

WHEREAS, Taylor states that it filed site plans with Winslow on August 27, 2008, and that as a by-right development it will be approved by all reviewing agencies; and

WHEREAS, in response to Cedar Brook's motion to intervene, Taylor states that there is sufficient sewer treatment allocation for both projects and has no objection to Cedar Brook being entitled to its full allocation of 82,000 gpd; and

WHEREAS, Winslow submitted correspondence to COAH dated September 9, 2008 wherein it details developments that have already received sewer allocation as well as those which are awaiting such allocation; and

WHEREAS, Winslow states that it has no opposition to Cedar Grove's motion to intervene; and

WHEREAS, a COAH task force convened on September 12, 2008 and reviewed the papers submitted and the arguments contained therein; and

WHEREAS, the Council heard oral argument at COAH's September 22, 2008 meeting; and

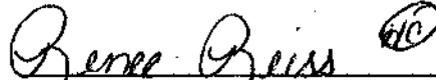
WHEREAS, the task force recommended that a temporary scarce resource restraint be imposed on Winslow to ensure that any sewer capacity that may be reserved for inclusionary development is not lost pending the Council making a decision on the motion before it.

NOW THEREFORE BE IT RESOLVED that the Council hereby imposes a temporary scarce resource restraint upon Winslow Township pending the final disposition of Taylor's motion; and

BE IT FURTHER RESOLVED that Winslow Township may not allocate any sewer capacity without first receiving approval via motion from the Council, excepting applications for single and two family homes;

BE IT FURTHER RESOLVED that Cedar Brook is hereby granted intervener status to this matter;

BE IT FURTHER RESOLVED that the Council refers this matter to a task force for a determination regarding whether Taylor should receive priority sewer allocation and regarding the imposition of a permanent scarce resource restraint upon Winslow Township.



Renee Reiss, Secretary
New Jersey Council on
Affordable Housing

Dated: *September 24, 2008*